

VIA E-MAIL AND U.S. MAIL

March 6, 2014

State Water Resources Control Board  
c/o Mr. Michael Buckman  
Post Office Box 2000  
Sacramento, CA 95812-2000  
michael.buckman@waterboards.ca.gov

Re: Protest of Patterson Irrigation District to Drought Temporary Urgency Change Order

Dear Mr. Buckman:

The State Water Resources Control Board (**State Board**) has approved a request from the Department of Water Resources and U.S. Bureau of Reclamation to temporarily change operations criteria imposed upon the projects (**TUCP Order**). Patterson Irrigation District (**PID**) hereby protests the TUCP Order dated January 31, 2014, modified on February 7, 2014 and February 28, 2014. It is our understanding that the Executive Director of the State Board intends to further amend the TUCP Order on March 12, 2014. Pending that further amendment, the State Board has indicated that it will consult with interested parties and ensure that adequate information has been developed and analyzed to understand the operational alternatives regarding carryover storage, export restrictions and the consequences of the alternatives.

#### Background

PID is a senior (1910) water right holder in the San Joaquin River, and holds a long-term contract and settlement agreement with the United States Bureau of Reclamation, Contract No. 14-06-200-3598A-LTR1 (**Contract**). Through the Contract the parties reached a settlement with respect to any and all of PID's claims that construction and operation of the Central Valley Project interfered with PID's senior rights to the use of the water of the San Joaquin River by providing PID with 6,000 acre-feet of Replacement Water.

The Contract specifies the circumstances under which PID's senior water rights may be curtailed up to a maximum of 77% as a result of a critical year as defined in the Contract. On February 15, 2014, PID was notified that it would be receiving only 40% of its replacement water supply under the Contract. That reduction has been made, in part, due to the condition imposed by the State Board in the TUCP restricting export pumping to 1,500 cfs for "health and safety" purposes.

Protest

The State Board must clarify that the minimum pumping allowed for the CVP includes pumping required to meet the contractual commitments of prior right holders. Because those commitments were made in settlement of claims against the CVP, they are necessarily conditions of operation of the CVP, and no CVP operations are allowed unless those settlements are honored. Reclamation intended that pumping for senior water right settlement and exchange obligations be included in the 1,500 cfs as explained in the February 14, 2014 report submitted to the State Board by Reclamation and DWR.

All parties have assumed that Reclamation's 1,500 cfs minimum pumping level includes pumping to meet the baseline critical water requirements of senior water rights holders: Reclamation assured the State Board that the minimum 1,500 cfs diversion level is supported by the 2008 Biological Opinion. The USFWS Biological Opinion determination cited by Reclamation provides:

In order to allow the CVP/SWP to provide health and safety needs, critical refuge supplies, and **obligation to senior water rights holders**, the combined CVP/SWP export rates will not be required to drop below 1,500 cfs in [multiple dry-year] circumstances.

Thereby expressly acknowledging that deliveries to senior water rights holders as part of the 1,500 cfs minimum baseline.

If the Board purports to impose upon Reclamation an order that prevents diversions from the Delta to meeting contractual settlement commitments to senior water right holders, it is required to first hold a public hearing and allow the submission of evidence, make the findings required by the Water Code, and support those findings with evidence.

Joinder in Prior Protests

PID hereby joins in and incorporates by reference the arguments raised in the protest and petitions for reconsideration filed by the San Joaquin River Exchange Contractors Water Authority and its member agencies.

Very truly yours,



JEANNE M. ZOLEZZI  
Attorney-at-Law

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Patterson Irrigation District Board of Directors